

ESTTA Tracking number: **ESTTA1079765**

Filing date: **09/04/2020**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92072799
Party	Plaintiff Origin Effects Limited
Correspondence Address	BREWSTER TAYLOR STITES & HARBISON PLLC 1800 DIAGONAL RD , SUITE 325 ALEXANDRIA, VA 22314 UNITED STATES Primary Email: btaylor@stites.com 703-739 4900
Submission	Other Motions/Papers
Filer's Name	Mari-Elise Paul
Filer's email	mpaul@stites.com, btaylor@stites.com, tdash@stites.com
Signature	/mari-elise paul/
Date	09/04/2020
Attachments	Redacted Reply in Support of Motion to Amend.pdf(509176 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**IN THE MATTER OF TRADEMARK
REGISTRATION NO. 3,872,784**

ORIGIN EFFECTS LIMITED)	
)	
Petitioner)	
)	
v.)	Cancellation No. 92072799
)	
TRAVIS HARRIS DBA REVIVAL ELECTRIC)	
)	
Registrant)	
)	

**PETITIONER’S BRIEF IN REPLY TO RESPONDENT’S
OPPOSITION TO MOTION TO AMEND**

Petitioner hereby replies to Respondent’s brief in opposition (“Resp. Br.”) to Petitioner’s Motion for Leave to Amend its Petition for Cancellation. Petitioner had advised Respondent that it would be amending the Petition for Cancellation to allege fraud in an e-mail on June 28 (*See* Taylor Declaration (“Taylor Dec.”), ¶ 11; Ex. 9), and, it is important for the purpose of consideration of the motion to compel that the Board appreciate that fraud has become an issue in this proceeding.

In its brief in Opposition to the Motion for Leave to Amend, Petitioner makes two arguments: (1) the motion for leave to amend is not “germane to the discovery dispute” (37 CFR §2.120(f)) (2) the Petition for Cancellation is frivolous and was filed to protect Petitioner from a trademark infringement action.

A. The Motion to Amend is Germane to the Pending Motion to Compel

With respect to the first argument, the motion for leave to amend is certainly germane to the discovery dispute and the motion to compel in that there has been discovery in this

proceeding which directly bears on the issue of fraud, and it is important that the Board be aware in determining the discovery disputes that fraud is an issue in this proceeding.

Respondent has now clearly admitted in its brief in opposition to Petitioner's Motion to Compel as well as in its opposition to Petitioner's Motion to Amend that contrary to the statements made in its declaration filed with its application and its declaration under Section 8, it "has never alleged it sold guitar amplifiers", which is one of the two products identified in the registration.

With respect to the other product, "electronic effects pedals sold for use with sound amplifiers". Though Respondent now claims two sales in 2009 in its brief in opposition to Petitioner's motion to compel (p. 5), the evidence provided by Respondent shows that at most it had one sale of a pedal to Mr. Harris's father "on or about" July 10, 2009 i.e. only one sale which occurred eight months before the filing of the application for registration of its mark on March 14, 2010. The records provided by Respondent further show that there were no further sales until November, 2011, eight months after the filing of the application. (Taylor Dec. ¶ 13; Ex. 11.) A single sale, if it was a sale, to one's father eight months prior to the filing of an application cannot support a claim of use of the mark in commerce (i.e. "in the ordinary course of trade") in an application, particularly since there were no further sales for eight months after the application was filed. The evidence shows that only two pedals were sold in 2010 and then only three pedals sold in all of 2011. *Id.*

Therefore, there is no question but that the issue of fraud should be considered in considering the requests for orders concerning the provision of information and documents made in Petitioner's Motion to Compel.

Finally, as stated by Respondent, the motion for leave to amend was filed contemporaneously with the motion to compel. Like the motion for extension of the discovery period filed together with the motion to compel, it is intended that the motion for leave to amend would be decided at the same time as the motion to compel. The motion to amend is complementary to the motion to compel and is in no way intended to delay or interfere with consideration of the motion to compel.

B. The Petition for Cancellation Is Not Frivolous and Was Not Filed For the Reasons Stated by Respondent

Respondent has not directly addressed the merits of the Motion to Amend the Petition for Cancellation but has elected instead to argue that the Motion to Amend should not be granted because the underlying Petition for Cancellation is frivolous.

Respondent's claim that the Petition for Cancellation is frivolous is itself frivolous. Petitioner attaches hereto as a confidential document a copy of the Investigative Report which it obtained on October 18, 2019, and which was provided to Respondent under Bates Nos. OEL000001-13. *Id.* ¶ 3; Second Taylor Declaration ("Taylor Dec. 2" Ex. 14.)

It is stated in the report that

[w]e attempted to add each of the three items listed on the Revival Electric website to the online shopping care, but each time encountered a message stating that the product is not available.

The most recent activity found on Revival Electric social media accounts is from September 2, 2018, on Twitter.

In searching the Internet at large among other references, we found the following blog post of note, dated December 13, 2017: ...Anyone have or ever use any of their pedals? They still around?...Emails sent and messages left for Travis Harris/Revival Electric to date have not garnered a response

Id. Ex. 14, pp.2-3.

Further, it was not possible for the investigators to make any contact with Mr. Harris by phone or email. None of their e-mail or phone messages received any response. *Id.* Ex. 14, p. 13.

Based on the investigator's report and its own investigations, Petitioner had a reasonable basis for belief that the "REVIVAL ELECTRIC" mark had been abandoned, and the information received from the investigators relating to the cessation of sales with no evidence of any apparent intent to resume use has been borne out in discovery.

As stated in Petitioner's brief in support of its motion to compel, the documents produced by Respondent show that sales ceased on May 21, 2018, and did not resume again until more than two months after the Petition for Cancellation was filed, with the sale of nine or ten pedals from January 24, 2020 into July 2020. (Taylor Dec. ¶¶ 13 and 14, Ex. 11). Despite repeated requests, Respondent has provided no documentary evidence of any effort to resume use after sales ceased in May following the sale of nine pedals in the entire year 2018 (Pet. Br. pp. 11-16) until sales began again two months after the Petition for Cancellation was filed i.e. ten pedals sold from January 2020 into July 2020. *Id.* Ex. 11.

The sales record documents with Bates Nos. 182-84 show at most very sporadic sales prior to the abandonment of the mark in 2018 i.e. two pedals sold in 2010, three sold in 2011, twenty one sold in 2012, nine pedals sold in 2013, seventeen sold in 2014, seven sold in 2015, fifteen sold in 2016, forty eight pedals sold in 2017, and nine pedals sold in 2018. There is no evidence of any sales from May 2018 until January 2020. The documents with Bates Nos. 275-291 show one alleged sale in 2009 and ten sales in 2020. *Id.* Ex. 11. (In its brief but not in any answer, Respondent claims two sales in 2009. Resp. Br. p.4.) The documents thus show a total of 142 pedals sold over the course of eleven years i.e. an average of 12.9 pedals per year.

Further, the documents provided show a basis for the claim of fraud in the amended petition for cancellation. First, as Respondent has finally clearly stated, it never sold the "guitar amplifiers" for which it claimed use in commerce in its application for registration and in its

declaration under Section 8. Resp. Am. p. 2 n. 1. With respect to the other product for which use was claimed in the application, “electronic effect pedals for use with sound amplifiers”, discovery has shown that Respondent had no basis for claiming of the mark in commerce on this product at the time of filing its application on March 14, 2010, since the evidence shows that it had not sold any pedals since the alleged sale of a pedal “on or about” July 10, 2009, and that it did not sell any pedal again until nearly eight months later in November 2010. (Taylor Dec. ¶¶ 13 and 14, Ex. 11.)

Respondent claims that various documents show that it maintained its domain name and web site during the period of non-use from May, 2018, to January, 2020. Resp. Am. p. 2. However, there is no indication that it was advertising any products as available for sale during that period or that it any way otherwise indicated to potential purchasers that products would be available at some time in the future. The investigator’s report attached as Exhibit 14 shows that no product was available for sale and that there was no apparent way even to reach Respondent.

With respect to Respondent’s claim that its nonuse was due to a shortage of parts (*Id.*), Respondent now states in its brief in response to Petitioner’s Motion to Compel that “[i]n or about late 2019 to early 2020, MLCC’s were available again, in or about, and Respondent was able to resume manufacturing”. Resp. Br. p. 6. Apart from the fact that Respondent has produced no evidence of any unsuccessful or successful effort at any time to obtain the parts, this statement is completely inconsistent with its Answers to Interrogatories which stated that “[i]n 2019 there was a “global shortage in specialty parts for designs, which forced Respondent to redesign and retool its manufacturing”. (Taylor Dec. ¶ 5; Ex. 1 p. 5.) If Respondent in fact redesigned and retooled its alleged “manufacturing” because of the shortage of parts, there would have been no need to wait until the part became available.

Finally, while Petitioner’s motivation for filing the Petition for Cancellation is not relevant to its merits, the motivation is evident from the docket for Petitioner’s application. (Taylor Dec. 2 ¶ 4 Ex. 15.) The docket shows that an Examiner’s Amendment issued on May 24, 2019. As evidenced by the Examiner’s Amendment the refusal to register based on Respondent’s registration was withdrawn. (*Id.* Ex. 16.) However, the docket further shows that the refusal was reinstated with a further office action issuing on June 28 and that, following the filing of the Petition for Cancellation on November 19, 2019, Petitioner filed a request for suspension of action on the application on November 21, 2019.

The registration was preventing registration of Petitioner’s mark, and, as is evident from the discussion above, Petitioner had reason to believe that the registration had every reason based on the report that it received to believe that the “REVIVAL ELECTRIC” mark had been abandoned. It had no reason to believe, as alleged by Respondent (Resp. Am. p. 2), that Respondent would file an action for trademark infringement against Petitioner based on the mark.

September 4, 2020

Respectfully submitted,

STITES & HARBISON PLLC

/s/ Brewster Taylor

Brewster Taylor

Mari-Elise Paul

1800 Diagonal Road, Suite 1800

Alexandria, VA 22314

Telephone: (703) 739-4900

Email: btaylor@stites.com | mpaul@stites.com

Counsel for Petitioner

ORIGIN EFFECTS LIMITED

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was served on counsel for Respondent, this 3rd day of September, by sending it via electronic mail to Joshua A. Ridless at jr@ridlesslaw.com.

/s/ Mari-Elise Paul
Mari-Elise Paul

proceeding. This report showed that no product on Respondent's web site was for available for sale, that the last activity of the Respondent on social media was in 2018, and that it was not possible to reach the Respondent by phone or e-mail (attached hereto as Exhibit 14).

(4) The Petition for Cancellation of U.S. Registration No. 3,872,704 was filed on November 19, 2019. As evidenced by the Trademark Office docket for Applicant's application serial no. 88/031,419 (attached as Exhibit 15), although the Examining Attorney had initially issued an Examiner's Amendment and withdrawn the refusal to register based on Respondent's prior registration no. 3,872,704, on June 28, 2019, the refusal to register was reinstated. On November 21, 2019, Petitioner requested suspension of proceedings pending disposition of the Petition for Cancellation filed on November 19, 2019.

(5) All statements made on my own knowledge are true, and all statements made on information and belief are believed to be true.

September 4, 2020

/s/ Brewster Taylor
Brewster Taylor

From: Joshua A. Ridless <jr@ridlesslaw.com>
Sent: Thursday, July 16, 2020 4:33 PM
To: Taylor, Brewster <btaylor@stites.com>
Cc: Dash, Tameka <tdash@stites.com>; Paul, Mari-Elise <mpaul@stites.com>
Subject: Re: Origin Effects Limited v. Travis Harris dba Revival Electric - Cancellation No.

Mr. Taylor,

Our supplements responses and productions were in response to your meet and confer correspondences. Our document production is now complete.

Sincerely,
Joshua Ridless

Ridless Law Office
500 Washington Street, Suite 700
San Francisco, CA 94111
Tel 415.614.2600
www.ridlesslaw.com

On Jul 16, 2020, at 1:23 PM, Taylor, Brewster <btaylor@stites.com> wrote:

Mr. Ridless:

Please send signed copies of the answers and supplemental answers to the first and second set of interrogatories.

Please also advise as to whether you will be responding to the e-mails which I sent concerning the responses and document production in connection with our discovery requests.

Sincerely,
Brewster Taylor

Brewster B. Taylor

Member

Direct: 703-837-3906

Fax: 703-518-2936

btaylor@stites.com

STITES & HARBISON PLLC

1800 Diagonal Road, Suite 325, Alexandria, VA 22314

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From: Joshua A. Ridless <jr@ridlesslaw.com>

Sent: Wednesday, July 15, 2020 3:56 PM

To: Taylor, Brewster <btaylor@stites.com>

Cc: Dash, Tameka <tdash@stites.com>; Paul, Mari-Elise <mpaul@stites.com>

Subject: RE: Origin Effects Limited v. Travis Harris dba Revival Electric - Cancellation No.

Mr. Taylor,

Attached please find Respondent's supplemental responses to Interrogatories and requests for production of documents, set two.

Sincerely,

Joshua A. Ridless

Ridless Law Office

500 Washington Street, Suite 700

San Francisco, CA 94111-2939

Tel (415) 614-2600

Fax (415) 480-1398

www.ridlesslaw.com

From: Joshua A. Ridless <jr@ridlesslaw.com>

Sent: Wednesday, July 15, 2020 12:54 PM

To: 'Taylor, Brewster' <btaylor@stites.com>

Cc: 'Dash, Tameka' <tdash@stites.com>; 'Paul, Mari-Elise' <mpaul@stites.com>

Subject: RE: Origin Effects Limited v. Travis Harris dba Revival Electric - Cancellation No.

Mr. Taylor,

I'm uploading corrected bates stamps for document pages 1-258 to the shared dropped box folder, and attaching Bates Stamp 304. It appears there were overlapping Bates Stamps creating the confusion as to which numbers contained the correct spreadsheet. 182-184 are the correct bates stamps, notwithstanding prior responses.

For clarity, we've produced Bates Stamps 1-258 and 261-304.

Sincerely,

Joshua A. Ridless

Ridless Law Office
500 Washington Street, Suite 700
San Francisco, CA 94111-2939
Tel (415) 614-2600
Fax (415) 480-1398
www.ridlesslaw.com

From: Joshua A. Ridless <jr@ridlesslaw.com>
Sent: Wednesday, July 15, 2020 10:25 AM
To: 'Taylor, Brewster' <btaylor@stites.com>
Cc: 'Dash, Tameka' <tdash@stites.com>; 'Paul, Mari-Elise' <mpaul@stites.com>
Subject: RE: Origin Effects Limited v. Travis Harris dba Revival Electric - Cancellation No.

Mr. Taylor,
Attached please find Respondent's supplemental responses to Interrogatories and requests for production of documents, set one.

Sincerely,
Joshua A. Ridless

Ridless Law Office
500 Washington Street, Suite 700
San Francisco, CA 94111-2939
Tel (415) 614-2600
Fax (415) 480-1398
www.ridlesslaw.com

From: Taylor, Brewster <btaylor@stites.com>
Sent: Sunday, June 28, 2020 11:40 AM
To: jr@ridlesslaw.com
Cc: Dash, Tameka <tdash@stites.com>; Paul, Mari-Elise <mpaul@stites.com>
Subject: RE: Origin Effects Limited v. Travis Harris dba Revival Electric - Cancellation No.

Mr. Ridless:

This is to follow up on your response below to our e-mail of March 22 setting forth the deficiencies in the answers to interrogatories and document production in response to our first set of discovery requests.

In your e-mail response below of April 17, your response to all but a few interrogatories is to simply refer to documents alleged to show sales, claim use of the "REVIVAL ELECTRIC name" for services, and state that when the stay at home orders are lifted your client would "attempt to complete his diligence and supplement his responses". Many of the questions raised in the interrogatories and in my follow-up e-mail of March 22 are simply ignored.

It has been nearly a month since you stated in the meeting on June 3 that Mr. Harris would be able to access further documents in two weeks. We request that you now provide amended answers signed under oath and amended responses to the document requests, both of which are updated to account for

any activities in 2019 and 2020. We request that you provide the amended and updated answers and responses to document requests by no later than July 10. We will, of course, be doing the same as required.

This is also to confirm that we will be following up with respect to the responses and document production in connection with the second set of discovery requests and will be requesting updated and amended answers signed under oath and updated .

If we do not receive amended answers by July 10 as requested below, we will proceed with filing a motion to compel. Finally, this is to advise that we will soon be amending the notice of opposition to allege fraud in the application and in the declaration under Section 8 which was filed with the registration.

Interrogatories

Interrogatory No.1:

Please state the first dates of sale of each of the three electronic pedal products which you have identified as having been sold under the registered mark. You did not refer us to documents in lieu of an answer in your response or raise any specific objections, and an amended answer is required.

With respect to the documents to which you have referred us in your e-mail, it appears that you have Bates-stamped documents which have a slightly different numbering than the documents which you produced to use. Please send the Bates-stamped documents.

The credit card processing alerts on which you rely to show sales in 2010 are notices to Travis Harris that his credit card has unsettled transactions. There is no mention in these documents of “SYNAPSE” products, and they do not appear to support the sale of “SYNAPSE” products in 2010.

The documents (for the years 2012-2014 and 2014 separately) which are cited in connection with the sale of the Revival Electric Metric 3 do not show sale of the product in 2014 as alleged in your answer and e-mail or of Metric IQ as alleged in your e-mail

Finally, you have mentioned “amplifier service and modification. Provided services and custom modifications primarily for guitar and bass amplifiers. First sale of services occurred in 2009. This interrogatory is directed identification of and information concerning all products which have been sold under the mark. Although the information is not responsive in the context of this interrogatory concerning products, as you are no doubt aware, you have not provided requested information and documents relating to claimed services.

Interrogatory No. 2:

In your response you referred us to the documents 182-84. However, in your e-mail you have now made certain statements as to alleged earlier sales in 2009 which are completely unsupported by any documentation and do not appear in any of documents which have been alleged to have complete information in response to a number of the Interrogatories. The answer also does not specify how many units were sold, and the answer is also inconsistent with the claim in the answer to interrogatory no.7 that the pedals are manufactured on demand

We require an amended answer which includes this new information and actual sales in 2009 since the new claims are unsupported by any documents. Further, the answer should be updated with respect to any sales of products under the mark in 2019 and 2020. The documents provided do not reflect any sales in 2009, 2019, or 2020.

We know that Mr. Harris changed his web site and tried to begin selling again after he became aware of the petition for cancellation. Any sales in 2019 and 2020 are highly relevant to these proceedings.

There is also an unexplained inconsistency with the first document provided to us, which included sales only from 2016 to 2018 and which showed fewer sales in those years and also included also included information on cancellations and refunds not shown in documents 182-84. Please confirm that documents 182-84 show all completed sales other than the newly alleged sales in 2009.

Finally, you have also stated in your e-mail that “Responding Party was also providing electronic and guitar amplifier repairs and modifications under the Revival Electric name as early as August 1, 2009, perhaps earlier”. Please confirm that the word “pedal” should be inserted after “electronic”.

Interrogatory No. 3:

Please provide an amended answer as requested and discussed with respect to Interrogatory No. 2.

Interrogatory No. 4:

Your objection is unsupported and without merit as is evident from the case which I cited, and you certainly have not “responded in full”. In all events, as recognized by the Board, the objection also cannot stand since you proposed an effectively identical interrogatory no. 4. Further, the response is inconsistent with the response to the very next interrogatory. If it is not possible to respond as to advertising expenses with respect to each product, please respond as to all products for each year since any of the products were first sold.

Interrogatory No. 5:

Again, as you know, your own interrogatory no. 5 is effectively identical to our earlier served interrogatory no. 5, including the request to “state the time period during which each of the identified types of advertising, marketing, or other promotional efforts took place”. You cannot ignore this part of the interrogatory and maintain that you have “responded in full”. We ask that you provide this information and update the amended response as necessary.

Interrogatory No. 6:

The interrogatory clearly requests information as to “each designer and manufacturer for the product sold under the Registered Mark”. There is no way to interpret this interrogatory as requesting information only as to person making the final assembly. Your own interrogatory no. 6 is effectively identical, and you cannot object to your own interrogatory as “improper and not likely to lead to discovery admissible evidence”. Further, the information sought is clearly relevant. As stated in your response to the very next interrogatory, you state “Responding Party is only able to identify the date a product manufacturer was requested and a date it received such product from the manufacturer”. The manufacturers are an independent source of information as to when products were ordered and made and whether, as claimed, the products were made “on demand” or whether, as indicated by Respondent’s response to Interrogatory No. 1, Respondent was selling off inventory. An updated amended response is required, particularly in view of the response

Interrogatory No. 7:

As you know, your response to this interrogatory is inconsistent with your response to Interrogatory No. 6 since in response to an interrogatory requesting information as to each product identified in response to Interrogatory No. 1 and requesting for each month in which the product was not being manufactured the inclusive time periods during which the product was not being manufactured and the reasons for the cessation of manufacturing activities, you stated “Responding Party is only able to identify the date a product manufacturer was requested and a date it received such product from the manufacturer”, clearly indicating the entire product was made by a manufacturer and sent to Respondent. Further, you did not provide the information requested. Instead, in your e-mail you referred

us again to sales information and provided no explanation of the clear inconsistency with the response to Interrogatory No. 6.

You have made no specific objection to this interrogatory but have not provided the information. There is no basis for objection in view of the Protective Order, and the information is highly relevant to the issue of abandonment in asking when and why manufacture ceased.

Interrogatory No. 8:

The Interrogatory specifically asks as to each product the reasons for cessation of sales of the product during periods of a month or more in which the product was not being sold. Information as to the reasons for the cessation of sales is clearly important on the issue of abandonment. However, in view of the number of instances in which products were not sold for a month or more, please respond as to periods of six months or more in which there were no sales. As you know, the reasons for cessation of sales of each product are very relevant to the issues of abandonment.

Interrogatory No. 9:

There is no basis for your claim that the response to this very important interrogatory is “complete”, and the reference to the documents relating to sales is unresponsive. The interrogatory requests a detailed description of the steps taken with respect to resuming use of the mark as to each product sold under the mark when sale of the product had ceased for more than a year and requests identification of each person contacted in connection with such steps to resume use. The response in its entirety is that “[i]n 2019, there was a global shortage in specialty parts for designs, which forced Respondent to redesign and retool its manufacturing. During this period of retooling, service, support, and custom modifications for customers continued.” As you know, this vague statement as to the reasons for cessation of use is completely unsupported by documentation, and it provides no detail as to the extent and length of the alleged “global shortage”, no detail as to orders made by unfulfilled, or how it had a specific impact on sales in 2019 (there were only ten units sold in all of 2018), and no detail as to the “retooling” and “redesigning”.

Further, the response does not address the cessation of use for over a year between the newly alleged sales in 2009 and the alleged sales in November 2010 or as to the separate products identified in your response to Interrogatory No. 1. An amended and updated answer is required.

Interrogatory No. 10:

In your response to Interrogatory No. 10, you state that from August 2018 to November 2019, Respondent did not make a sale but continued to advertise and market products on its website and Instagram. The evidence which you produced shows that the last sale in 2018 was in May, 2018, and our independent evidence shows that your client was not advertising or marketing products during that period of a year and a half as being available for sale. You have not provided evidence of sales in either August, 2018 or November, 2019 (when the petition for cancellation was filed) or of advertising and marketing of products on your website and Instagram during that period. We ask that that you provide amended and updated response.

Interrogatory No. 11:

In response to this Interrogatory, you stated that “Respondent manufactures and services pedals, including the following products: Revival Electric Synapse, Revival Electric Metric (u-Metric), and Present Amplifier Services and modification. Respondent is the sole employee”. However, Respondent has not provided any evidence that it manufactures and services any of these products or provides “Present Amplifier Services and modification”. Please amend and update the answer.

Interrogatory No. 12:

In response to Interrogatory No. 12, you have referred us to the same sales documents concerning products. However, the interrogatory also requests information as to the income from services. You have repeatedly stated in your e-mail in response to all of the preceding Interrogatories that your client was providing services under the Revival Electric name. Since you are seeking to rely on the rendering of services under the name in connection with trying to show that the mark had not been abandoned for the products identified in the registration, it is necessary to provide information and documents to support those claims.

Interrogatory No. 13:

Please update and amend the response to Interrogatory No. 13 if there is any updated information.

Interrogatory No. 14:

In response to this interrogatory requesting identification of agreements relating to the mark and any product sold under the mark you have refused to identify a single agreement. In our earlier e-mail we asked that you identify your client's agreements with manufacturers in accordance with the definition and with the retailers identified in response to interrogatory no. 13. These agreements can be produced under the Protective Order. These agreements are clearly relevant to the issue of abandonment e.g. if agreements have been terminated.

Document Production Requests

In response to all twenty three of the first set of document requests, Respondent stated without any specific objections that “[a]ll non-privileged, responsive documents have been or will be produced”. In our e-mail of March 22, we identified document requests to which no responsive documents had been produced (Request Nos. 4-8, 12-16, 19 and 21) and, with respect to the remainder, asked whether all responsive documents had been produced or when fully responsive documents would be produced (Request Nos. 1-3, 9-11, 17-18, 20, and 22-23).

In your e-mail response, you have stated, as with the responses to the Interrogatories that “due to the stay at home orders that are in place my client is unable to access all locations where additional information or documents may be kept. When the stay at home orders are lifted, my client will attempt to complete his diligence and supplement his responses.”

We request that you update and amend your responses to the document production requests and complete the unresponsive document production by no later than July 10.

Sincerely,

Brewster Taylor

Brewster B. Taylor

Member

Direct: 703-837-3906

Fax: 703-518-2936

btaylor@stites.com

STITES & HARBISON PLLC

1800 Diagonal Road, Suite 325, Alexandria, VA 22314

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From: Joshua A. Ridless <jr@ridlesslaw.com>

Sent: Friday, April 17, 2020 2:59 PM

To: Taylor, Brewster <btaylor@stites.com>

Cc: Paul, Mari-Elise <mpaul@stites.com>; Dash, Tameka <tdash@stites.com>

Subject: RE: Origin Effects Limited v. Travis Harris dba Revival Electric - Cancellation No.

Mr. Taylor,

I'm attaching supplemental documents to our production. My client's sales spreadsheet is located at bate stamp 184-6, but they are pages 182-4 for the pdf previously produced. This may have been the source of your confusion. As to all of your meet and confer issues raised, please note, due to the stay at home orders that are in place my client is unable to access all locations where additional information or documents may be kept. When the stay at home orders are lifted, my client will attempt to complete his diligence and supplement his responses.

Interrogatory NO. 1. Please refer to the spreadsheet located at bate stamp 184-6 (pages 182-4 for the pdf previously produced above which was included in our initial production). This spreadsheet includes the dates of sale, products sold and price for each product sold by my client since 2010. Additionally, see bate stamps 3-7 (2010 Synapse sales), bate stamps 9-16 (2011 Synapse sales), bate stamps 19-62 (2012-2014 Synapse and Metric EQ sales), bate stamps 64-77 (2014 Synapse and Metric EQ sales), bate stamps 81-87 (2014 Synapse and Metric EQ sales), bate stamps 89-103 (2016 Synapse, Micro, Metric EQ sales), as well as all documents produced to date.

Additionally, Responding Party built the first batch of pedals bearing the Revival Electric name (quantity of 5 Synapse Vocal Effects units) in early to mid-July of 2009, selling the first 2-3 Pedals by August 1, 2009. A second batch of five pedals was built and sold in or about mid-October of 2009. A total of ten Synapse pedals were built and commercially available in 2009. The first pedal was sold to Responding Party's father, and the second to a former band member.

Responding Party was also providing electronic and guitar amplifier repairs and modifications under the Revival Electric name as early as August 1, 2009, perhaps earlier.

Due to the stay at home orders that are in place my client is unable to access all locations where additional information or documents may be kept. When the stay at home orders are lifted, my client will attempt to complete his diligence and supplement his responses.

Interrogatory NO. 2. Please refer to the spreadsheet located at bate stamp 184-6 (pages 182-4 for the pdf previously produced above which was included in our initial production). This spreadsheet includes the dates of sale, products sold and price for each product sold by my client since 2010. Additionally, see bate stamps 3-7 (2010 Synapse sales), bate stamps 9-16 (2011 Synapse sales), bate stamps 19-62 (2012-2014 Synapse and Metric EQ sales), bate stamps 64-77 (2014 Synapse and Metric EQ sales), bate stamps 81-87 (2014 Synapse and Metric EQ sales), bate stamps 89-103 (2016 Synapse, Micro, Metric EQ sales), as well as all documents produced to date.

Additionally, Responding Party built the first batch of pedals bearing the Revival Electric name (quantity of 5 Synapse Vocal Effects units) in early to mid-July of 2009, selling the first 2-3 Pedals by August 1, 2009. A second batch of five pedals was built and sold in or about mid-October of 2009. A total of ten Synapse pedals were built and commercially available in 2009. The first pedal was sold to Responding Party's father, and the second to a former band member.

Responding Party was also providing electronic and guitar amplifier repairs and modifications under the Revival Electric name as early as August 1, 2009, perhaps earlier.

Due to the stay at home orders that are in place my client is unable to access all locations where additional information or documents may be kept. When the stay at home orders are lifted, my client will attempt to complete his diligence and supplement his responses.

Interrogatory NO. 3. Please refer to the spreadsheet located at bate stamp 184-6 (pages 182-4 for the pdf previously produced above which was included in our initial production). This spreadsheet includes the dates of sale, products sold and price for each product sold by my client since 2010. Additionally, see bate stamps 3-7 (2010 Synapse sales), bate stamps 9-16 (2011 Synapse sales), bate stamps 19-62 (2012-2014 Synapse and Metric EQ sales), bate stamps 64-77 (2014 Synapse and Metric EQ sales), bate stamps 81-87 (2014 Synapse and Metric EQ sales), bate stamps 89-103 (2016 Synapse, Micro, Metric EQ sales), as well as all documents produced to date.

Responding Party was also providing electronic and guitar amplifier repairs and modifications under the Revival Electric name as early as August 1, 2009, perhaps earlier.

Due to the stay at home orders that are in place my client is unable to access all locations where additional information or documents may be kept. When the stay at home orders are lifted, my client will attempt to complete his diligence and supplement his responses.

Interrogatory NO. 4. We have already responded to this request in full. We are not waiving our objections.

Interrogatory NO. 5. We have already responded to this request in full and included documents which respond to issues raised in your meet and confer. Responding party has advertised on his website and via social media since first selling Revival Electric products. He has experimented with avenues of advertising such as NAMM, but prefers relying on customer recommendations along with social media and the website.

Interrogatory NO. 6. As indicated in our response, Respondent is the sole designer and manufacturer for each product. The interrogatory does not ask for the manufacturer of the parts, but rather the manufacturer of the product. Additionally, we would view any request that sought such proprietary information as improper and not likely to lead to the discovery admissible evidence. Our response is complete.

Interrogatory NO. 7. Please refer to the spreadsheet located at bate stamp 184-6 (pages 182-4 for the pdf previously produced above which was included in our initial production). This spreadsheet includes the dates of sale, products sold and price for each product sold by my client since 2010. Additionally, see bate stamps 3-7 (2010 Synapse sales), bate stamps 9-16 (2011 Synapse sales), bate stamps 19-62 (2012-2014 Synapse and Metric EQ sales), bate stamps 64-77 (2014 Synapse and Metric EQ sales), bate stamps 81-87 (2014 Synapse and Metric EQ sales), bate stamps 89-103 (2016 Synapse, Micro, Metric EQ sales), as well as all documents produced to date.

Responding Party was also providing electronic and guitar amplifier repairs and modifications under the Revival Electric name as early as August 1, 2009, perhaps earlier.

Due to the stay at home orders that are in place my client is unable to access all locations where additional information or documents may be kept. When the stay at home orders are lifted, my client will attempt to complete his diligence and supplement his responses.

Interrogatory NO. 8. Please refer to the spreadsheet located at bate stamp 184-6 (pages 182-4 for the pdf previously produced above which was included in our initial production). This spreadsheet includes the dates of sale, products sold and price for each product sold by my client since 2010. Additionally,

see bate stamps 3-7 (2010 Synapse sales), bate stamps 9-16 (2011 Synapse sales), bate stamps 19-62 (2012-2014 Synapse and Metric EQ sales), bate stamps 64-77 (2014 Synapse and Metric EQ sales), bate stamps 81-87 (2014 Synapse and Metric EQ sales), bate stamps 89-103 (2016 Synapse, Micro, Metric EQ sales), as well as all documents produced to date.

Responding Party was also providing electronic and guitar amplifier repairs and modifications under the Revival Electric name as early as August 1, 2009, perhaps earlier.

Due to the stay at home orders that are in place my client is unable to access all locations where additional information or documents may be kept. When the stay at home orders are lifted, my client will attempt to complete his diligence and supplement his responses.

Interrogatory NO. 9. We disagree that the response is unclear. Our response is complete. Please refer to the spreadsheet located at bate stamp 184-6 (pages 182-4 for the pdf previously produced above which was included in our initial production). This spreadsheet includes the dates of sale, products sold and price for each product sold by my client since 2010. Additionally, see bate stamps 3-7 (2010 Synapse sales), bate stamps 9-16 (2011 Synapse sales), bate stamps 19-62 (2012-2014 Synapse and Metric EQ sales), bate stamps 64-77 (2014 Synapse and Metric EQ sales), bate stamps 81-87 (2014 Synapse and Metric EQ sales), bate stamps 89-103 (2016 Synapse, Micro, Metric EQ sales), as well as all documents produced to date. Due to the stay at home orders that are in place my client is unable to access all locations where additional information or documents may be kept. When the stay at home orders are lifted, my client will attempt to complete his diligence and supplement his responses.

Interrogatory NO. 10. We disagree that the response is unclear or inconsistent with documents produced. Unfortunately, petitioner has failed to identify how it is unclear or inconsistent. Please refer to the spreadsheet located at bate stamp 184-6 (pages 182-4 for the pdf previously produced above which was included in our initial production). This spreadsheet includes the dates of sale, products sold and price for each product sold by my client since 2010. Additionally, see bate stamps 3-7 (2010 Synapse sales), bate stamps 9-16 (2011 Synapse sales), bate stamps 19-62 (2012-2014 Synapse and Metric EQ sales), bate stamps 64-77 (2014 Synapse and Metric EQ sales), bate stamps 81-87 (2014 Synapse and Metric EQ sales), bate stamps 89-103 (2016 Synapse, Micro, Metric EQ sales), as well as all documents produced to date.

Responding Party was also providing electronic and guitar amplifier repairs and modifications under the Revival Electric name as early as August 1, 2009, perhaps earlier.

Due to the stay at home orders that are in place my client is unable to access all locations where additional information or documents may be kept. When the stay at home orders are lifted, my client will attempt to complete his diligence and supplement his responses.

Interrogatory NO. 11. We disagree that the response is unclear or inconsistent with documents produced. Unfortunately, petitioner has failed to identify how it is unclear or inconsistent, and only makes an incorrect conclusory statement that there is no evidence. Please refer to the spreadsheet located at bate stamp 184-6 (pages 182-4 for the pdf previously produced above which was included in our initial production). This spreadsheet includes the dates of sale, products sold and price for each product sold by my client since 2010.

Interrogatory NO. 12. Please refer to the spreadsheet located at bate stamp 184-6 (pages 182-4 for the pdf previously produced above which was included in our initial production). This spreadsheet includes the dates of sale, products sold and price for each product sold by my client since 2010. Additionally, see bate stamps 3-7 (2010 Synapse sales), bate stamps 9-16 (2011 Synapse sales), bate stamps 19-62 (2012-2014 Synapse and Metric EQ sales), bate stamps 64-77 (2014 Synapse and Metric EQ sales), bate

stamps 81-87 (2014 Synapse and Metric EQ sales), bate stamps 89-103 (2016 Synapse, Micro, Metric EQ sales), as well as all documents produced to date.

Responding Party was also providing electronic and guitar amplifier repairs and modifications under the Revival Electric name as early as August 1, 2009, perhaps earlier.

Due to the stay at home orders that are in place my client is unable to access all locations where additional information or documents may be kept. When the stay at home orders are lifted, my client will attempt to complete his diligence and supplement his responses.

Interrogatory NO. 14. Responding Party maintains that this interrogatory is compound. We have already confirmed that Respondent is the sole manufacturer and designer of his products. He has no written agreements between him and himself.

Due to the stay at home orders that are in place my client is unable to access all locations where additional information or documents may be kept. When the stay at home orders are lifted, my client will attempt to complete his diligence and supplement his responses.

Request for Production of Documents.

Request Nos. 1-23. Due to the stay at home orders that are in place my client is unable to access all locations where additional information or documents may be kept. When the stay at home orders are lifted, my client will attempt to complete his diligence and supplement his responses.

Sincerely,
Joshua A. Ridless

Ridless Law Office
500 Washington Street, Suite 700
San Francisco, CA 94111-2939
Tel (415) 614-2600
Fax (415) 480-1398
www.ridlesslaw.com

From: Taylor, Brewster <btaylor@stites.com>
Sent: Sunday, March 22, 2020 2:42 PM
To: jr@ridlesslaw.com
Cc: Paul, Mari-Elise <mpaul@stites.com>; Dash, Tameka <tdash@stites.com>
Subject: RE: Origin Effects Limited v. Travis Harris dba Revival Electric - Cancellation No.

Dear

Dear Joshua:

This will acknowledge receipt of your e-mail of March 17 with the responses to our first set of interrogatories and requests for production of documents and is to follow up on the responses. Please provide the information and documents requested below.

Interrogatories

(1) Int. No. 1: The responses provide only the years of first use for each of the three products listed. We have asked for full dates of first use. Further, these responses are not consistent with the information provided in the documents Bates stamped 182-184 to which we have been referred in a number of the responses relating to when the mark was in use. These documents do not show any orders prior to May 10, 2012, and do not show any orders between September 9, 2013 and February 3, 2016. They do show a first payment for the “Micro” product in August of 2016. Please check these documents. If they are not complete, please send the documents which show all

(2) Int. No. 2: Please either confirm that the 182-184 documents sent to us are accurate and accurately reflect all sales or send new documents which show the information requested.

(3) Int. No.3: Please confirm that the 182-184 documents which we received reflect total sales for each of the three products for each year in which each product was sold under the mark or send documents which reflect that information.

(4) Int. No.4: The objection is without merit. Advertising expenses are discoverable. See e.g. *Varian Associates v. Fairfield Noble-Corp.*, 188 USPQ 581, 583 (TTAB 1975), *Domondy v. 37.37, Inc.*, 113 USPQ2d 1264, 1267 (TTAB 2015). Please either confirm that the response provided was complete or provide additional information responsive to the request.

(5) Int. No. 5: In response to Interrogatory No. 5, you have identified different means of advertising but have not fully identified and described the means of advertising. Further, we have not received documents showing all means of advertising. Also, you have not advised as to the “time periods during which each of the identified types of advertising, marketing, or other promotional efforts took place”. For example, it would appear from your document production that you attended only one NAAM show – in 2017. Please provide the information requested, which bears directly on the issue of abandonment.

(6) Int. No. 6: The response to Interrogatory No. 6 is incomplete and ambiguous with reference to the responses to Interrogatory Nos. 7 and 14, which indicate that Travis Harris dba Revival Electric at least orders parts from manufacturers. Please provide a complete response, identifying the manufacturers involved for each product and identify for each manufacturer the inclusive dates in each year in which it was manufacturing the parts for the product. Further, although we appreciate that your client does not design the parts, please identify the extent to which he does design the final product.

(7) Int. No. 7: Please confirm that the 182-184 documents reflect the dates on which all products were ordered and the dates on which the products were received by Travis Harris dba Revival Electric or send new documents reflecting this information.

(8) Int. No. 8: Please confirm that the 182-184 documents we received as described above reflect the dates on which all products were sold or send new documents reflecting this information.

(9) Int. No. 9: The response to Interrogatory No. 9 is unclear and does not provide detail as requested. Does Respondent mean that there was a global shortage of the parts needed for its products for all of 2019? Also, the response is incomplete in that we have not been provided with any information or documents which indicate that there were any sales in 2009- November 2011. The 182-184 documents to which we have been referred do not show any sales until 2012. Further, the response does not identify the persons with whom you were in contact in connection with resuming production when there was demand. Please provide a complete response.

(10) Int. No. 10: This response is also inconsistent with the documents provided and incomplete. It does not state the date on which manufacture of each of the three identified products ceased. Nor does it describe in detail for each month since manufacture ceased, the steps which were being taken towards resuming use. Further, there is no evidence in the documents of a sale in August, 2018, or a sale in

November, 2019. Please provide information up to the time when the answer to the interrogatory is prepared for each of the three products.

(11) Int. No. 11: This response is inconsistent with the documents received. There is no evidence that Respondent currently sells any of the products or provides any of the services. It is not clear what is meant by "Present" amplifier service and modification. Further, the interrogatory requests information as to all products and services which are provided.

(12) Int. No. 12: We agree to limit the interrogatory to products sold and services advertised under the "REVIVAL ELECTRIC" mark. With respect to the documents with Bates Nos. 182-184, please confirm that the documents provided to us show total annual income for products or provide documents which do show such income. Please also state for each year the total annual income for providing services under the "REVIVAL ELECTRIC" mark.

(13) Int. No. 14: Please identify all Agreements with manufacturers and designers in accordance with the definition provided and all Agreements with the dealers identified in response to Interrogatory No. 13.

Document Production Requests

(1) Request No. 1: It does not appear that representative samples of all different types of advertising under the mark and representative samples for every different type of packaging or container have been produced. Please advise as to when they will be produced.

(2) Request No. 2: We have not received photographs which show each of the three products from all angles. Please advise as to when they will be produced.

(3) Request No. 3: This request would apply to the request for identification of documents in Interrogatory No. 5 (advertising and promotional documents) and Interrogatory No. 14 (agreements). We have not received documents which show all of the advertising referred to in the answer. With respect to Agreements, as stated above, the agreements with manufacturers, designers, and dealers are particularly important. Please advise as to when these documents will be produced.

(4) Request No. 4: No responsive documents have been produced. Please advise as to whether there are any responsive documents, and, if so, when they will be produced.

(5) Request No. 5: No responsive documents have been produced. Please advise as to whether there are any responsive documents, and, if so, when they will be produced.

(6) Request No. 6: No responsive documents have been produced. Please advise as to whether there are any responsive documents, and, if so, when they will be produced.

(7) Request No.7: No responsive documents have been produced. Please advise as to whether there are any responsive documents, and, if so, when they will be produced.

(8) Request No. 8: No responsive documents have been produced. Please advise as to whether there are any responsive documents, and, if so, when they will be produced.

(9) Request No. 9: See comments with respect to advertising above and advise as to whether there are any further responsive documents, and, if so, when they will be produced.

(10) Request No. 10: Please advise as to whether all responsive documents have been produced and, if not, when the remaining responsive documents will be produced.

(11) Request No. 11: Please advise as to whether all responsive documents have been produced and, if not, when the remaining responsive documents will be produced.

(12) Request Nos. 12 and 13: No responsive documents have been produced. See comments with respect to agreements above and advise as to when they will be produced.

(13) Request No. 14: No responsive documents have been produced. Please advise as to whether there are any responsive documents, and, if so, when they will be produced.

(14) Request No. 15: No responsive documents have been produced. Please advise as to whether there are any responsive documents, and, if so, when they will be produced.

(15) Request No. 16: No responsive documents have been produced. Please confirm that the products were shipped in packaging with labels and advise as to when representative specimens of each different label will be produced.

(16) Request No. 17: Please advise as to whether all responsive documents have been produced and, if not, when the remaining responsive documents will be produced.

(17) Request No. 18: Please advise as to whether all responsive documents have been produced and, if not, when the remaining responsive documents will be produced.

(18) Request No. 19: No responsive documents have been produced. Please advise as to whether there are any responsive documents, and, if so, when they will be produced.

(19) Request No. 20: Please advise as to whether all responsive documents have been produced and, if not, when the remaining responsive documents will be produced.

(20) Request No. 21: No responsive documents have been produced. Please advise as to whether there are any responsive documents, and, if so, when they will be produced.

(21) Request No. 22: Please advise as to whether all responsive documents have been produced and, if not, when the remaining responsive documents will be produced.

(22) Request No. 23: Please advise as to whether all responsive documents have been produced and, if not, when the remaining responsive documents will be produced.

Please do not hesitate to call or write if you have any questions concerning the foregoing. I otherwise look forward to hearing from you within a week.

Sincerely,

Brewster

Brewster B. Taylor

Member

Direct: 703-837-3906

Fax: 703-518-2936

btaylor@stites.com

STITES & HARBISON PLLC

1800 Diagonal Road, Suite 325, Alexandria, VA 22314

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From: Joshua A. Ridless <jr@ridlesslaw.com>

Sent: Tuesday, March 17, 2020 12:10 PM

To: Taylor, Brewster <btaylor@stites.com>

Cc: Paul, Mari-Elise <mpaul@stites.com>; Dash, Tameka <tdash@stites.com>

Subject: RE: Origin Effects Limited v. Travis Harris dba Revival Electric - Cancellation No.

Brewster,

Attached please find respondent's responses to your interrogatories and document requests.

Sincerely,

Joshua A. Ridless

Ridless Law Office

500 Washington Street, Suite 700

San Francisco, CA 94111-2939

Tel (415) 614-2600

Fax (415) 480-1398

www.ridlesslaw.com



PRIVILEGED & CONFIDENTIAL

Investigative Report

Marksmen File # 103236

Date: October 18, 2019

Client Subject: REVIVAL ELECTRIC

Client: Brewster Taylor, Esq.

Stites & Harbison

1800 Diagonal Rd

Suite 325

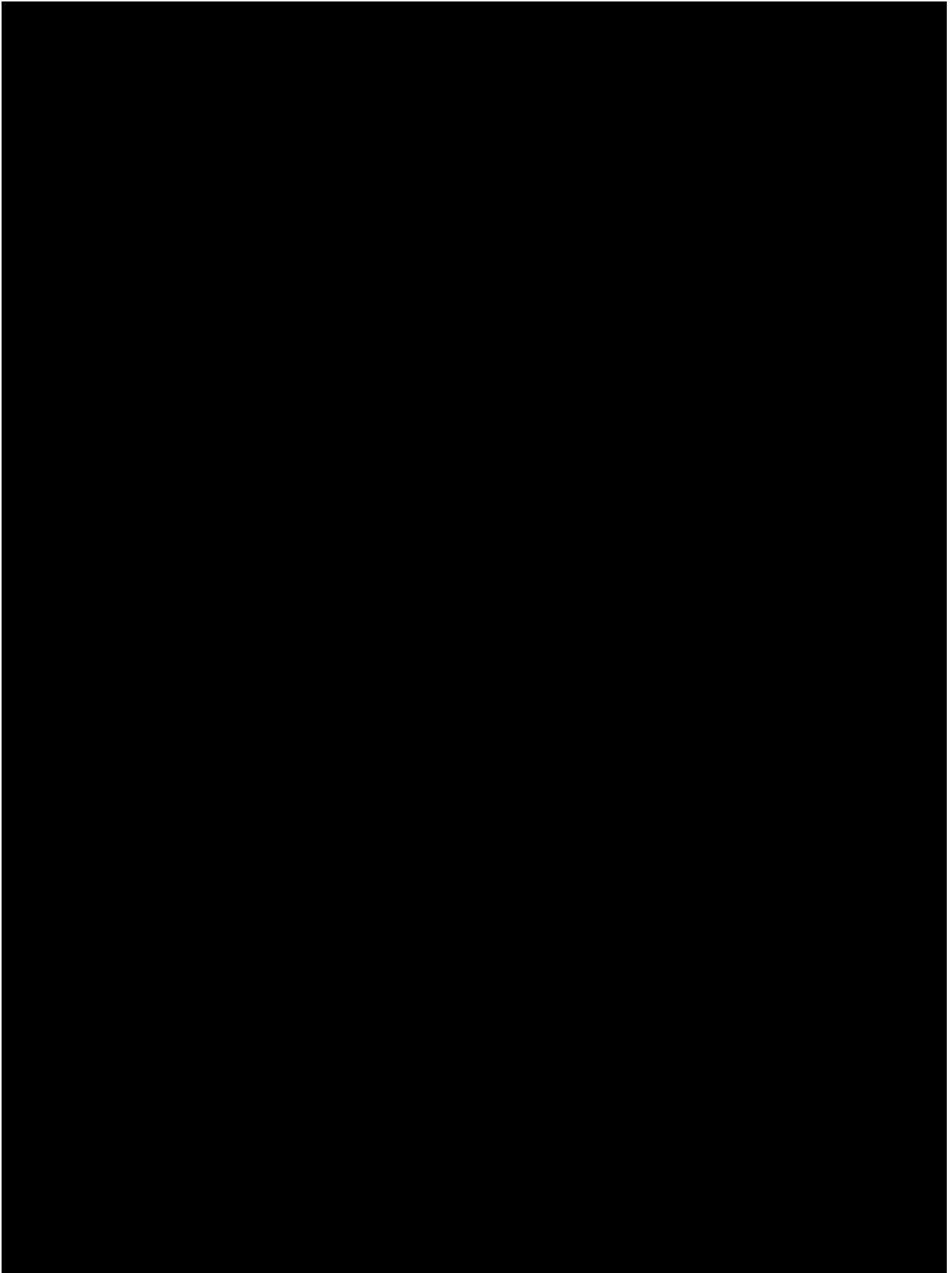
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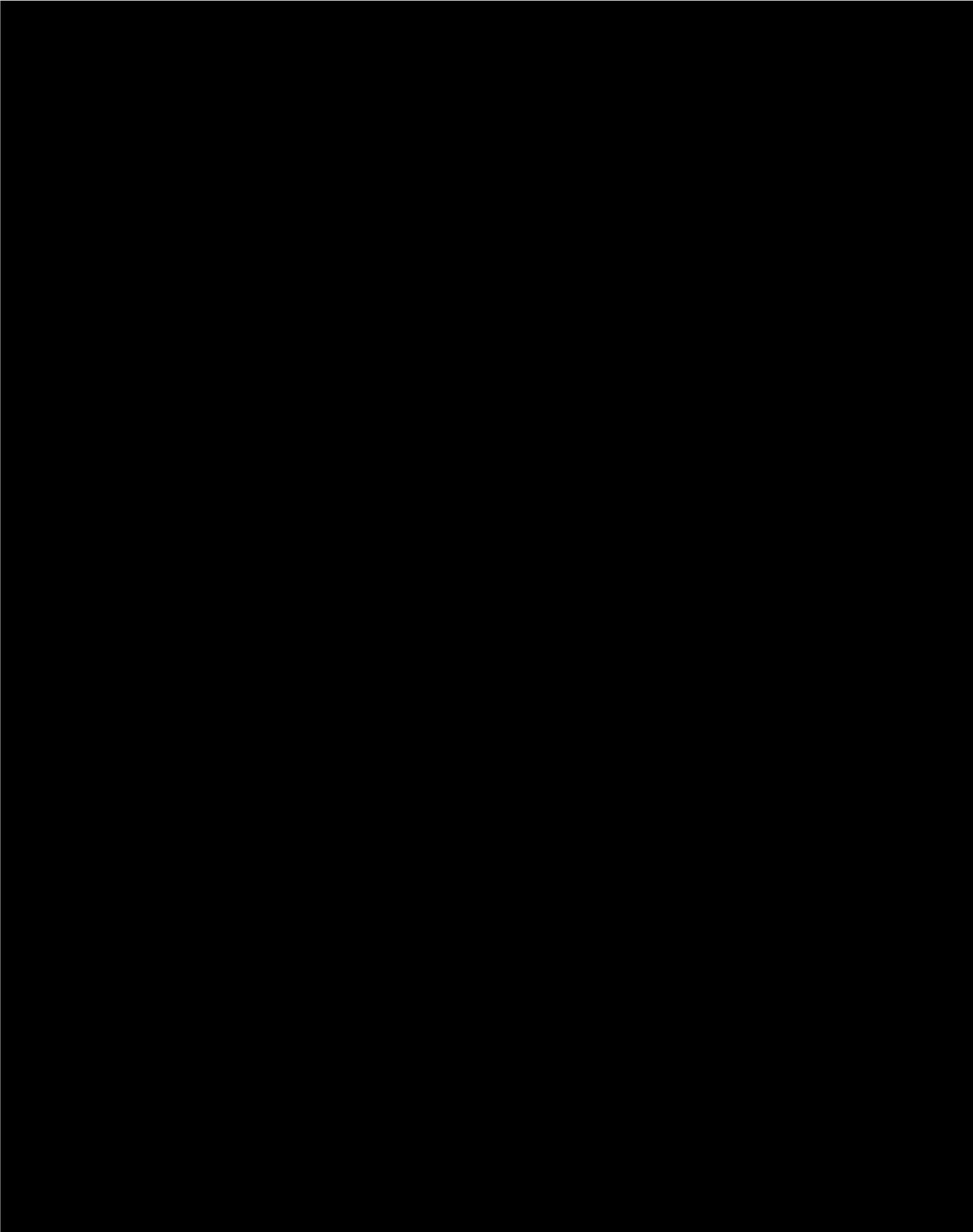
Marksmen Contact: cases@marksmen.com

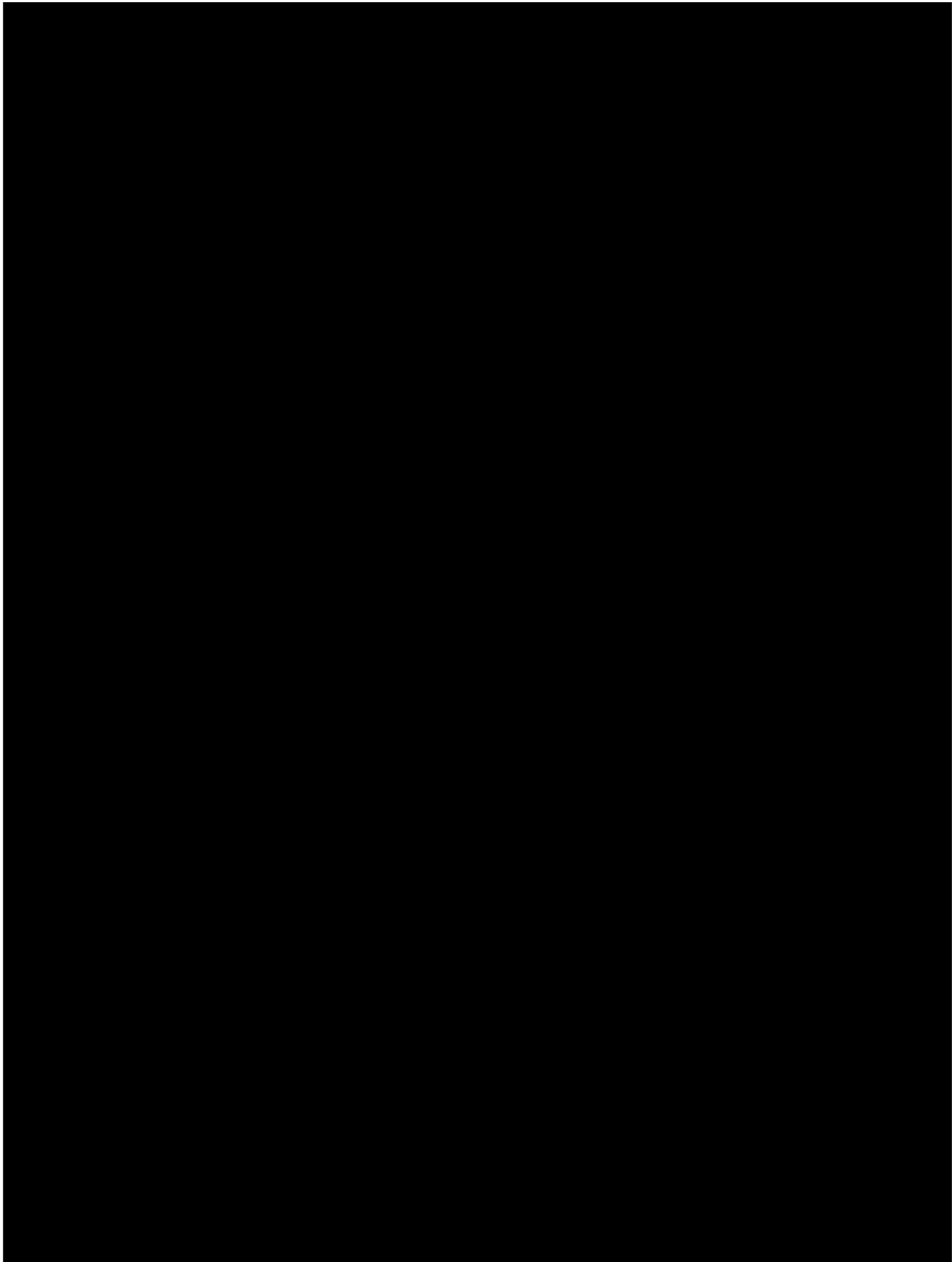
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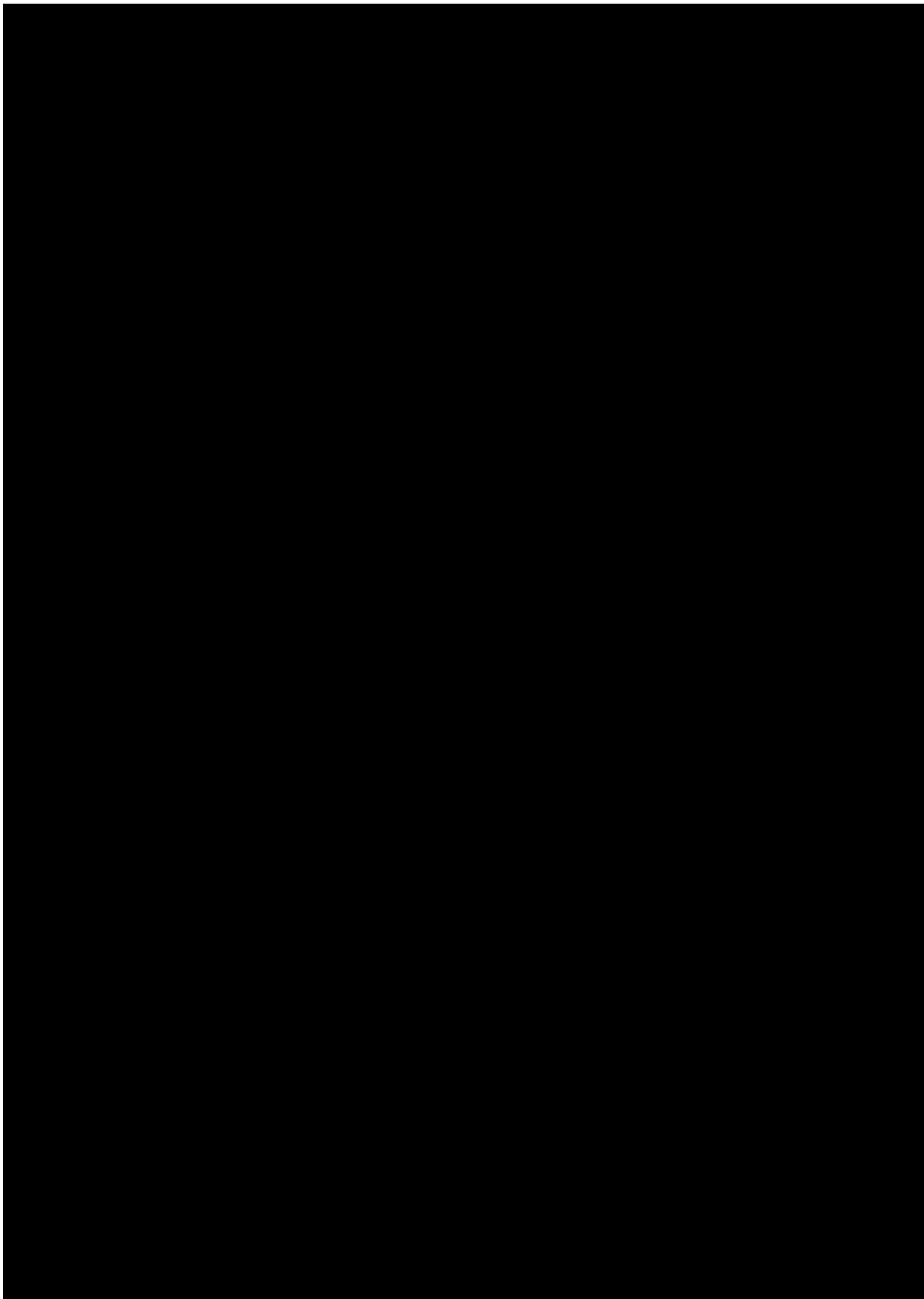
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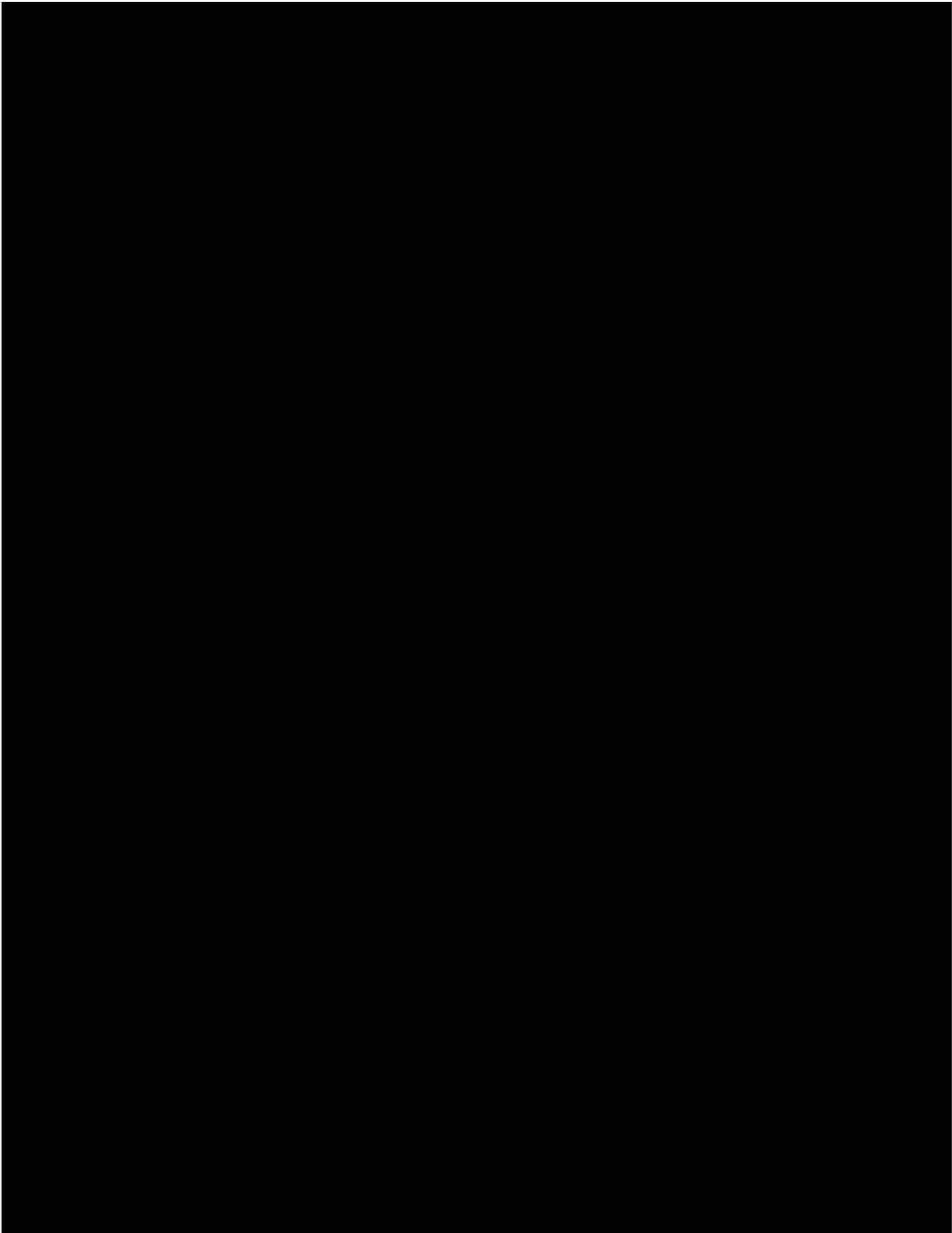
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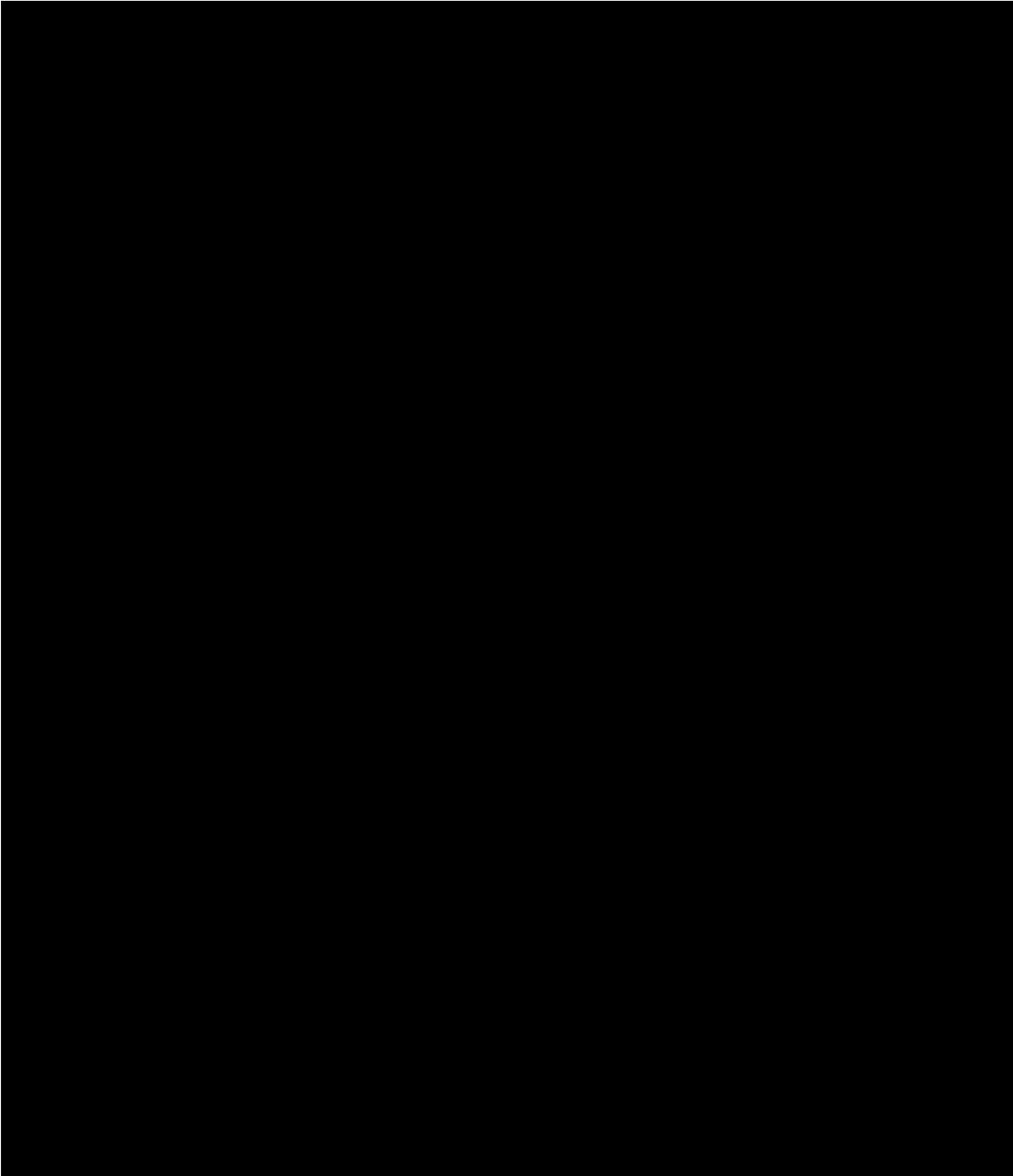


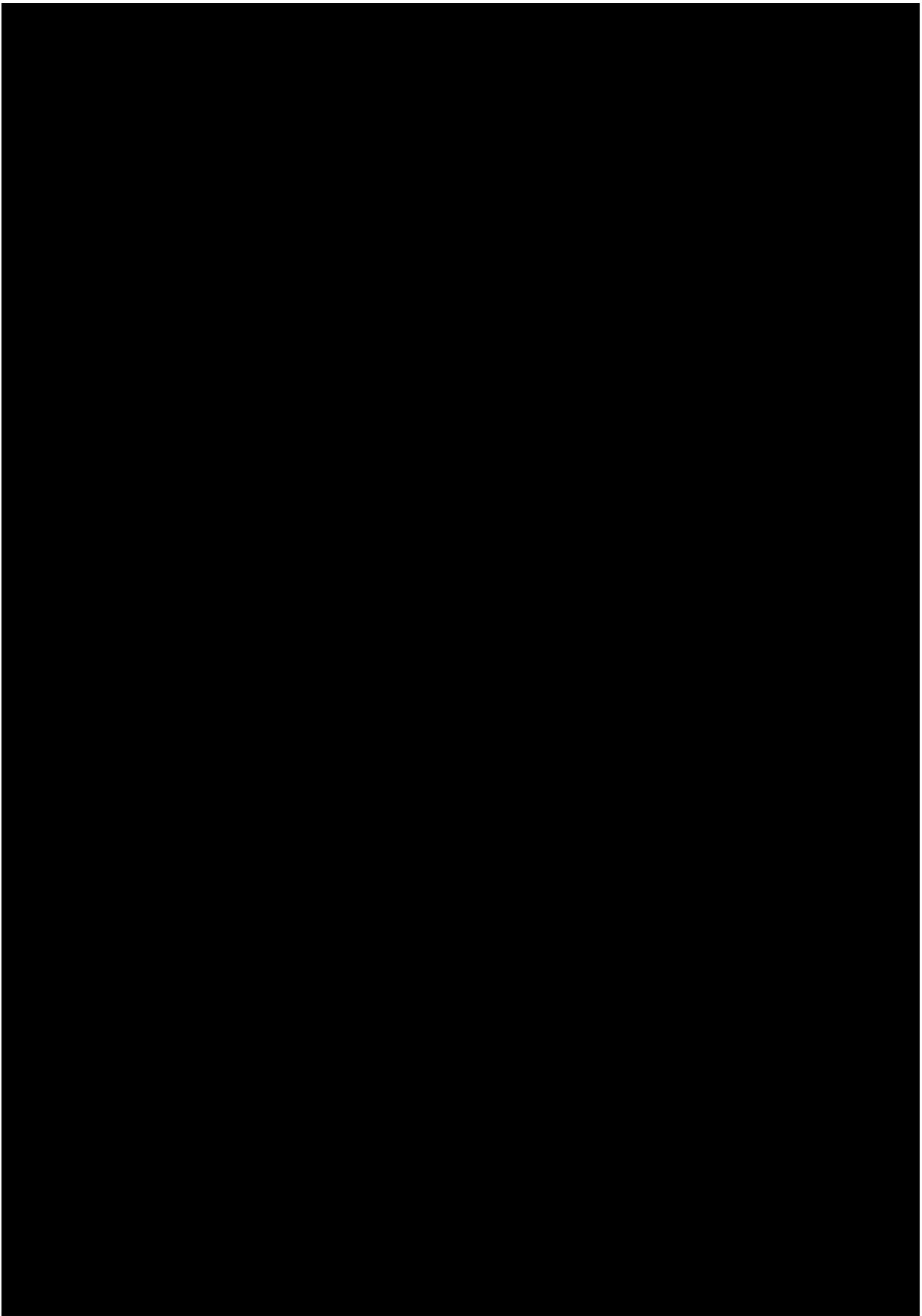


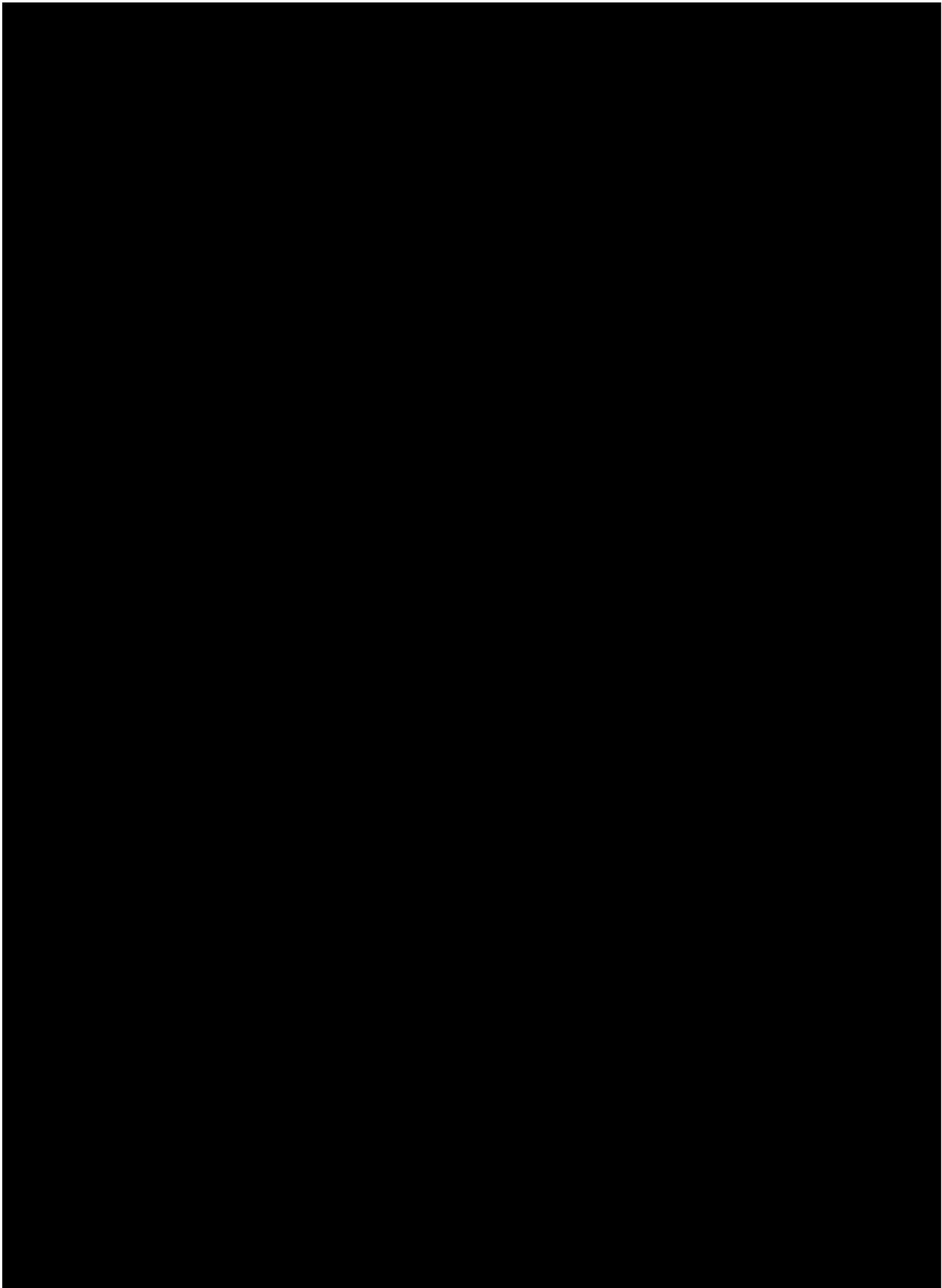


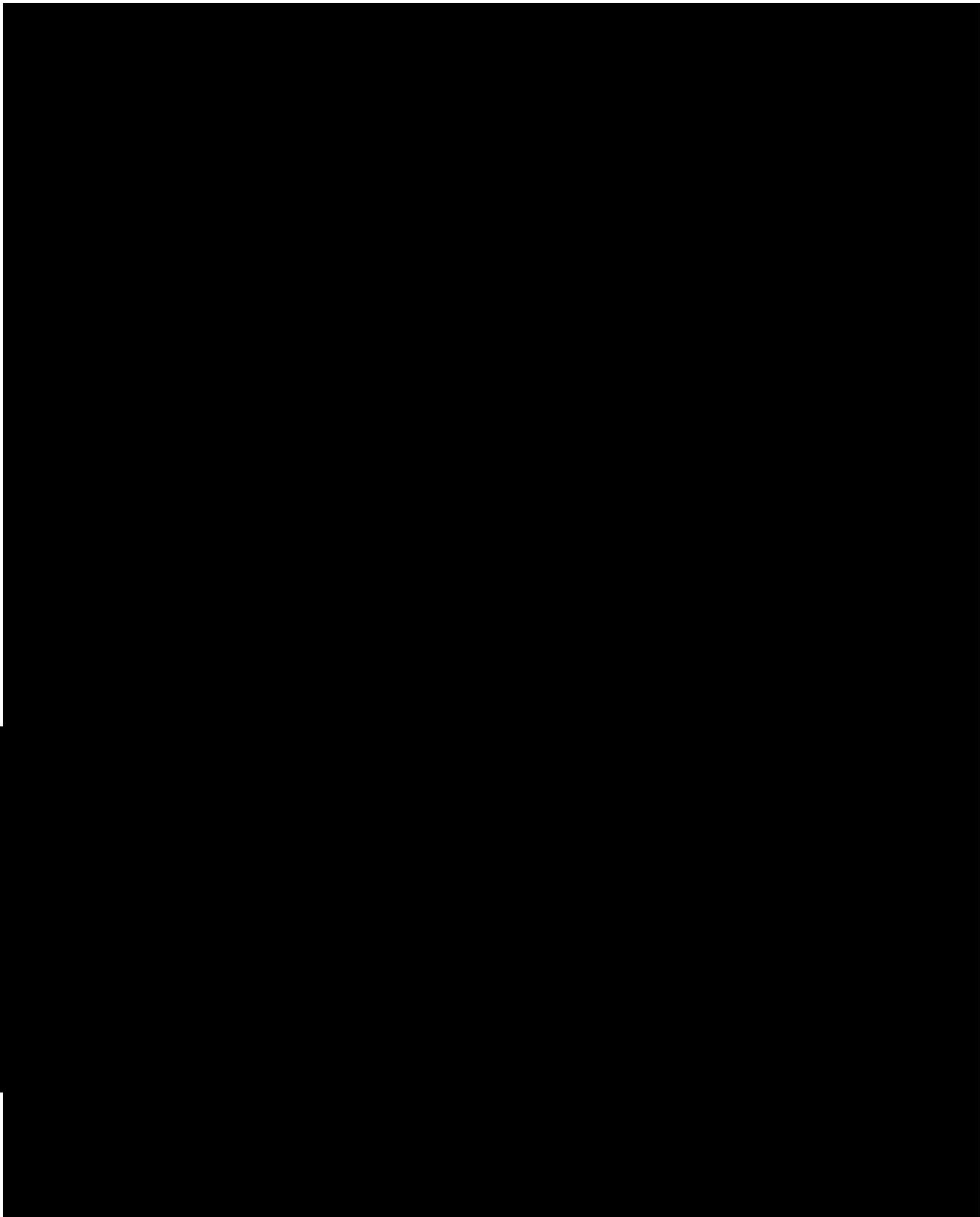


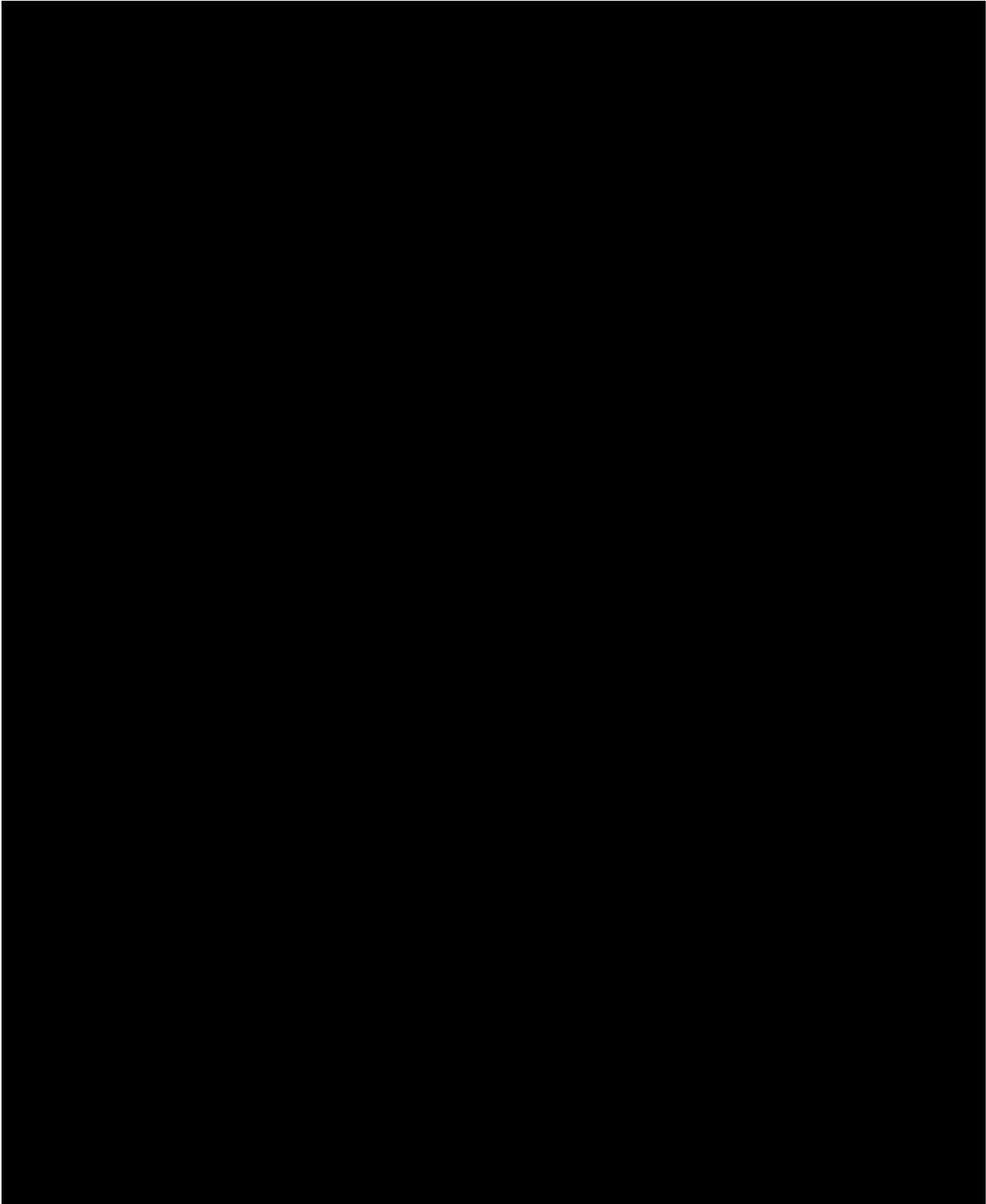


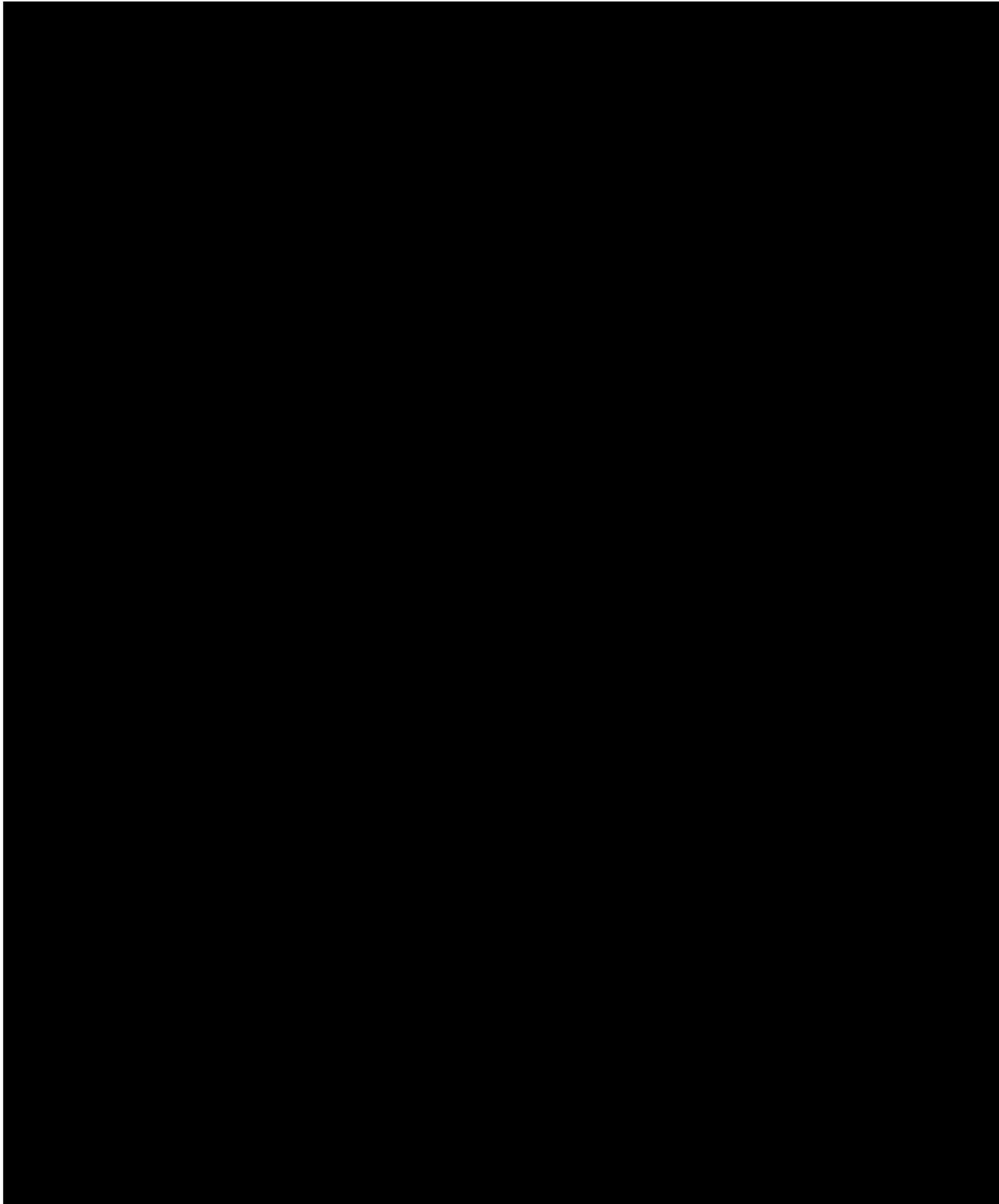












Conclusion

Pending further advisement from you, we have concluded our investigation of REVIVAL ELECTRIC. If you have further need of our services on this or any other matter, please contact us.

EXHIBIT 15

For assistance with TSDR, email teas@uspto.gov and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.

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<input type="checkbox"/>	May 25, 2019	Notice of Acceptance of AAU	XML
<input type="checkbox"/>	May 24, 2019	Examiners Amendment	XML
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<input type="checkbox"/>	Apr. 25, 2019	Amendment to Allege Use	MULTI
<input type="checkbox"/>	Apr. 25, 2019	Specimen	JPEG
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